Cri A 281/98

D3 (Cri)

(2)

APPEAL OF PRISONER

CF0000059596

No. 510/98 Name देवधारी

Father's name भैयादास

Residence ग्राम-मरमा, थाना-पलगवां Age 31 वर्ष

Sentenced आजीवन कारावास On 11-9-98

Under section S.F.A. 185/97 by प्रतिष्ठा कुमार अग्रवाल

धारा 302 भा.दं.वि. अपर सत्र न्या. अंबिकापुर

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appeliate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with-in seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practiotioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

Court of Madhya Pradesh JABALPUR. 30 OCT 1998 Reg. No. 315 Recept Clerk High Court, Jabalpur

1. Date of Application for copy of Judgement 11-9-98

2. Date of which copy received 11-9-98

3. Date on which appeal sent 12-9-98

4. Whether the prisoner wished to be represented or not-Yes/No.

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No. 510/98 Name देवधारी S/o भैयादास

Continued in जिला Jail अंबिकापुर

No. 4131 Dated 12-9-98 199

Forward to the CHIEF JUDICIAL MAGISTRATE Ambikapur-Surguja to gather which a copy of order passed in the case for favour of transmission to the proper Appelliate Court.

निर्णय-प्रति लिपि 7 पन्ने में संलग्न

Superintendent

Date of receipt in C.J.M's Office 14-9-98

Date of receipt record to accompany 16-10-98 with in time

Memo of Appeal of the Appeliate Court उच्च न्यायालय म.प्र. जबलपुर

No. 1 /Dated 16-10-98 199

Forwarded to the उच्च न्यायालय म.प्र. जबलपुर 16.10.98

C.J. Magistrate एस. के. सिंह मुख्य न्यायिक मजिस्ट्रेट अम्बिकापुर (सरगुजा)

Date of receipt in Appeliate Court

/SURGUJA TY.//

* * *

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

Cr. A No. 2801/98

**मामला क्रमांक ..... सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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DB: HON'BLE SHRI L.C. BHADOO AND
HON'BLE SHRI DHIRENDRA MISHRA, JJ

Criminal Appeal No. 2801/1998

Appellant : Devdhari

Versus

Respondent : State of Chhattisgarh

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Mr. Abhay Tiwari, Advocate for the appellant.
Mr. Akhil Agrawal, Panel Lawyer for the State.

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ORAL JUDGMENT
(14-11-2006)

Per L.C. Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentence dated 11-9-1998 passed in Sessions Trial No. 185/1997 whereby the learned Additional Sessions Judge, Sarguja, Ambikapur, after holding the appellant guilty for commission of offence under Section 302 of I.P.C., sentenced him to undergo imprisonment for life.

2. The case of the prosecution in brief necessary for disposal of this appeal is that deceased Budhani Bai was married to accused appellant Devdhari. The accused and deceased were residing in a room. In the fateful intervening nigh of 31st

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मामला क्रमांक Cr. A No. 2801/98 सन् 200



आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश 2 | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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December, 1996 and 1st January, 1997, Lalaram- brother of the accused was sleeping in his house, at about 11 p.m. in the night he heard the screams of Budhani Bai that Devdhari has attacked her. On which Lalaram along with his father, mother and neighbourers came to the room of the accused with a burning lantern and enquired from Budhani Bai as to who has assaulted her, on which she disclosed that the accused Devdhari has assaulted her with a knife. On this, they enquired from the accused and he replied that he has assaulted Budhani Bai with a knife. After some times, Budhani Bai succumbed to the injuries. The accused also informed them that Budhani Bai was having illicit relations with Nanhu Lohar, that is why he has assaulted her. On this Lalaram- the brother of the accused lodged the report Ex. P-1 in Police Station Chalgali. The investigating Officer after registering the offence left for the place of occurrence and after giving notice to the Panchas, prepared the inquest report Ex. P-4 of the body of Budhni Bai. While in the Police custody, the accused gave memorandum Ex. P-6 regarding the knife- the weapon of offence and in pursuance of that, he got recovered the knife under Ex. P-7 from hay. The body of Budhani Bai was sent for post mortem examination to Community Health Centre, Wadrafnagarh where Dr. Kalpana Tonde conducted the post mortem on the body of Budhani Bai and prepared post mortem report Ex. P-12 and she opined that the cause of death was shock due to haemorrhage. Recovered articles were sent for chemical examination to Forensic Science Laboratory, Sagar, from where report Ex. P-19 was

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Gr.A.No. 2801/98

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**आदेश पत्रक (पूर्वानुबद्ध)**

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received. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Ramanujganj, who in turn committed the case to the Sessions Judge, Sarguja wherefrom the learned Additional Sessions Judge, received the case on transfer.

3. The prosecution in order to establish the charge against the accused, examined 11 witnesses. Statement of accused was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him. However, he admitted that in the fateful night, he along with his wife Budhani Bai were sleeping in the same room. They were residing together. At about 11-12 in the night, hearing the voice of his wife, he woke up, went near the door and saw that his wife was lying in injured condition and blood was oozing out of her stomach. At that time, somebody attacked him also with a knife, blood started oozing out of his stomach. He became unconscious. He had not committed murder of his wife and he has been falsely implicated.

4. The learned Additional Sessions Judge, after hearing learned counsel for the respective parties, convicted and sentenced the accused as aforementioned.

5. We have heard Mr. Abhay Tiwari, Advocate on behalf of the appellant and Mr. Akhil Mishra, Panel Lawyer on behalf of the State.

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**मामला क्रमांक** C.A. No. 2801/98 **सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

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6. Mr. Tiwari has not disputed the homicidal death of Budhani Bai. Apart from that, from the evidence of P.W. 7 Dr. Kalpana Tonde who conducted the post mortem on the body of Budhani Bai has stated that the death of Budhani Bai was homicidal and was on account of shock due to haemorrhage, injuries were ante mortem in nature and her report is Ex. P-12, it is established that the death of Budhani Bai was homicidal in nature.

7. As far as involvement of the accused in the crime in question is concerned, there is no direct and ocular evidence in this case as almost every witness has turned hostile. The whole case rests on circumstantial evidence and as per the settled law, to rest conviction on the circumstantial evidence as has been held by the Hon'ble apex Court in the matter of **Dhanjav Chatterjee Vs. State of West Bengal** reported in **1994 (2) SCC 220,** the prosecution is required to establish that-

> "In a case based on circumstantial evidence the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder

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that legally established circumstances and not merely indignation of the Court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof.

8. The prosecution has tried to establish the charge against the accused based on following circumstances:

(i) that the accused made extra judicial confession before PW-5 Baijnath;

(ii) that the weapon of offence, the knife stained with blood, was recovered at the instance of the accused;

(iii) that in the fateful night the accused and the deceased were sleeping in the same room. The accused made a false explanation in his statement under section 313 of the Code of Criminal Procedure that in the night between 11-12 p.m. somebody assaulted his wife with knife and when he woke up on hearing the cries of his wife, that person assaulted him with knife on stomach and blood started oozing. He became unconscious.

9. So far as first point is concerned, PW-5 Baijnath is the father of Budhnibai. He has been declared hostile as he has not supported the case of the prosecution before the Court, therefore, the Public Prosecutor was permitted to cross examine him and in paragraph 9 of his cross examination by the Public Prosecutor he has

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आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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stated that on his inquiry from his son-in-law Deodhari he informed him that he has committed murder of his wife attacking her with a knife. He had denied the suggestion of counsel for accused in paragraph 11 of cross examination that it is incorrect to say that the accused had not informed that he had attacked Budhani Bai. In fact, he disclosed later on that he had committed murder of Budhani Bai. Therefore, from the above evidence of this witness it is clear that the accused made extra judicial confession before him. In the cross examination by the Public Prosecutor as well as by counsel for the accused in paragraphs 9 and 11, this witness has categorically stated that the accused made extra judicial confession before him. As per the settled law the whole evidence of a hostile witness cannot be thrown away. Relevant evidence regarding involvement of the accused if stated by the hostile witness can be taken into consideration. Of course, that cannot be made sole basis for conviction. Before placing reliance on such evidence some sort of corroborative piece of evidence must be there which probabalise the truthfulness of the evidence of the witness.

10. So far as the second point i.e recovery of knife is concerned, even though the witness of seizure memo PW-10 Sitamani has turned hostile, he has stated that no statement was made by the accused. However, in paragraph 2 of the evidence he has stated that the knife was recovered from the house of accused under Ex. P-7. PW-11

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| | P.R.K. Singh the investigating officer has categorically stated that on 4.1.1997 while in police custody the accused gave memorandum Ex. P-6 that he has concealed a knife, the weapon of offence in hay stack and on being produced by the accused the knife stained with blood was taken into possession under Ex. P-7. As per FSL report Ex. P-19 the knife was stained with blood. There is no reason before this Court to disbelieve the evidence of the Investigating Officer as nothing has come on record that the Investigating Officer in order to implicate accused in a false case concocted the recovery.<br><br>11. So far as the third point is concerned, even the accused has admitted in his statement under section 313 of the Cr.P.C. that in the fateful night he and his wife deceased Budhani Bai were sleeping in the same room. At about 11-12 p.m. he heard the cries of his wife, on which he woke up and saw his wife in injured condition, blood was oozing from her stomach. At that time some person attacked him on stomach and blood started oozing out of his stomach. He became unconscious but there is nothing on record to establish that the accused was attacked with knife and he sustained any injury. In the first instance the Investigating Officer, P.R.K. Singh PW-11 has not been cross examined on this aspect as to whether the accused sustained any injury nor any prosecution witness has been cross examined on this aspect. Had the accused sustained any injury inflicted by the third person, then he | |

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| | ought to have requested for medical examination or he ought to have explained before the Magistrate when he was produced to establish that in fact the offence was committed by some body else and when he woke up he also assaulted him and injury was present on his stomach. The accused was the best person to explain as to how Budhani Bai sustained injury as he was sleeping in the same room where Budhani Bai was sleeping and in fact the accused has made an explanation in his statement under section 313 of the Cr.P.C. but he has not been able to establish the same as the same is found to be false as he has not been able to bring any fact on record indicating that he sustained any injury on stomach inflicted by third person. Therefore, this false explanation given by the accused is also admissible in order to hold him guilty for the commission of the offence.<br><br>12. Therefore, the cumulative effect of the circumstances that he made extra judicial confession before Baijnath PW-5, same stand corroborated by recovery of knife, the weapon of offence at the instance of the accused and that he gave false explanation as to how the deceased sustained injury, from the above three circumstances irresistible conclusion can be drawn that the accused was the author of the crime in question and there is nothing on record which indicates that any body else than the accused was author of the crime in question. | |

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13. Counsel for the accused/appellant argued that as the accused was doubting the fidelity of the deceased Budhani Bai, therefore, in a heat of passion he attacked the deceased and therefore, the offence against the accused does not travel beyond section 304-I of the IPC. In support of his argument Mr. Tiwari placed reliance on the decision of Madhya Pradesh High Court in the matter of **Gangaram Vs. State of M.P.** reported in **2000 (1) C.Cr.J 470 MP**. In order to appreciate the arguments advanced by the counsel, we have perused the evidence and the record of the trial Court. There is nothing on record through which it can be held that the accused was doubting fidelity of his wife Budhani Bai and on account of that in the fateful night, some altercation took place between the two that overpowered his sober sense and he attacked the deceased. The judgment relied upon by the learned counsel for the accused/appellant is of no help to the accused as the same is distinguishable on facts.

14. Now coming to the question of intention, the manner in which the deceased was attacked with knife and as a result of which Budhani Bai sustained a fatal injury, even her intestine came out of the stomach out of the injury sustained by her and the injury was on vital organ with a knife i.e. deadly weapon, therefore, the intention of the accused to cause death of Budhani Bai has been established as per medical evidence.

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| | 15. In the result, we do not find any substance in this appeal and therefore, the same is liable to be dismissed. It is accordingly dismissed.<br><br>**Sd/-**<br>**L.C. Bhadoo**<br>**Judge**<br><br>**Sd/-**<br>**Dhirendra Mishra**<br>**Judge** | |

Pathak

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